IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

RSA.No. 162 of 2007()

AS.10/1992 of SUB COURT, MANJERI
OS.469/1989 of MUNSIFF COURT, MANJERI
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APPELLANT (1ST RESPONDENT/PLAINTIFF)
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* KUNNATHODI SANTHA,
OOTTUPURAM, KAPPIL DESOM, WANDOOR AMSOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT. (died)

ADDL.APPELLANTS

2. K.HARIDASAN,

3. K.SIVASANKARAN,

4. K.SREEKUMAR,

5. K.NALINI

ADDL. APPELLANTS TS 2 TO 5 ARE RESIDING AT OTTUPURAM, KAPPIL DESAM WANDOOR AMSOM, NILAMBUR TALUK, MALAPPURAM DISTRICT

6. K.MADHAVIKKUTTY, KUNNATHODI HOUSE, CHITRA NIVAS,
PAYYAMPALLY, NILAMBUR R.S NILAMBUR TALUK,
MALAPPURAM DISTRICT

* ADDL.RESPONDENTS 2 TO 6 ARE IMPLEADED AS THE LRS OF DECEASED SOLE APPELLANT AS PER ORDER DATED 8/6/07 IN IA 866/07

BY ADV. SRI.R.RAJESH KORMATH

RESPONDENTS: (APPELLANTS & 2ND RESPONDENT/DEFENDANTS)
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1. SRAMBIKKAL ANDY,
NOW RESIDING AT OOTTUPURAM, P.O.VADAKKUMPADAM,
(VIA)VANIYAMBALAM, NILAMBUR TALUK,
MALAPPURAM DISTRICT.

2. SRAMBIKKAL NARAYANAN,
NOW RESIDING AT OOTTUPURAM, P.O.VADAKKUMPADAM,
(VIA)VANIYAMBALAM, NILAMBUR TALUK,
MALAPPURAM DISTRICT.

3. THEYYATH MUNDEKKOTTIL SUDHAKARAN,
NOW RESIDING AT KARUVAMBRAM, PO. VADAKKUMPADAM,
(VIA)VANIYAMBALAM, NILAMBUR TALUK,
MALAPPURAM DISTRICT.

4. THONDANVEETTIL CHANDRAN,
P.O.VADAKKUMPADAM, (VIA)VANIYAMBALAM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

5. KADAMBATH CHANDRAN,
NOW RESIDING AT RUGMINI NILAYAM,
PUNNAPPALA P.O., (VIA)WANDOOR,
MALAPPURAM DISTRICT.

R3 & R4 BY ADV. SRI.K.SHIBILI NAHA

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

In view of the order passed in C.M.Appl.99/07 the appeal is dismissed.

Sd/-M.SASIDHARAN NAMBIAR,
JUDGE.

ORDER ON I.A.NO.314/07 IN RSA 162/07

DISMISSED

20/9/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PS to Judge.

M.SASIDHARAN NAMBIAR,J.

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C.M.Appl. NO.99 OF 200

in

R.S.A.No.162 of 2007

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Dated this the 20th day of August, 2007

O.R.D.E.R

This petition is filed under section 5 of the Limitation Act to condone the delay of 1536 days in filing the appeal. The case of the appellant was that first appellate court erroneously set aside the judgment of the trial court and after the judgment and decree of the first appellate court, the dispute was settled between appellant and respondents and respondents agreed to use the way passing in between the property of Maradan Raman seen by the Commissioner at the time of his first inspection and daughter of deceased Raman also consented to the said course, and respondents were using that way since then and appellant was hospitalized at Medical College, Kozhikode on 10.1.2007 and returned back home on 22.1.2007 and then she came to know that 5th respondent again

demolished the fence in the plaint schedule property and is taking vehicle through the plaint schedule property and when 5th respondent was asked by the brother of the appellant he has taken a the stand that he will take vehicles through the plaint schedule property as and when necessity arises and on taking legal advice on 27.1.2007 appellant wasapprised that so long as there is a decree in favour of respondents, they will be entitled to use the way through the plaint schedule property and immediately on 28.1.07 the brother of the appellant came over to the office of the counsel at Ernakulam and entrusted the matter to file the appeal and hence delay was cuased and the delay is to be condoned.

2. On hearing learned counsel it is clear that the inordinate delay of 1536 days is not satisfactorily explained. The alleged settlement which was disputed by the respondents in the counter affidavit is not a valid or sufficient ground to condone the delay. The petition is

dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006